

# DORSEY & WHITNEY

*A Partnership Including Professional Corporations*

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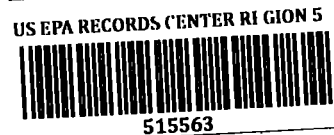
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October 6, 1983



Wayne G. Popham, Esq.  
Popham, Haik, Schnobrich,  
Kaufman & Doty, Ltd.  
4344 IDS Center  
Minneapolis, Minnesota 55402

Re: U.S.A. v. Reilly Tar & Chemical Corp.

Dear Wayne:

Enclosed herewith and served upon you by United States mail is a copy of Request for Production of Documents of Reilly Tar & Chemical Corporation to the City of St. Louis Park.

Yours very truly,

  
Edward J. Schwartzbauer

EJS:ml  
Enclosure

cc: All Counsel of Record

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

UNITED STATES OF AMERICA,

Civil No. 4-80-469

Plaintiff,

and

STATE OF MINNESOTA, by its  
Attorney General Hubert H.  
Humphrey, III, its Department  
of Health, and its Pollution  
Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;  
HOUSING AND REDEVELOPMENT AUTHORITY  
OF ST. LOUIS PARK; OAK PARK VILLAGE  
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,  
INC.; and PHILIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

REQUEST FOR PRODUCTION  
OF DOCUMENTS OF REILLY  
TAR & CHEMICAL CORPORA-  
TION TO THE CITY OF  
ST. LOUIS PARK

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

TO: City of St. Louis Park, plaintiff above-named, and  
its attorneys Wayne G. Popham, Esq., Allen Hinderaker,  
Esq. and Popham, Haik, Schnobrich, Kaufman & Doty,  
Ltd., 4344 IDS Center, 80 South Eighth Street,  
Minneapolis, Minnesota 55402

Pursuant to Rule 34 of the Federal Rules of Civil  
Procedure, defendant Reilly Tar & Chemical Corporation requests  
the City of St. Louis Park to produce all materials listed on  
the attached Exhibit A and Exhibit B which are found in a  
chronology dated October 30, 1974 and previously produced to  
Reilly Tar & Chemical Corporation in this matter, for inspec-  
tion and copying at the offices of Dorsey & Whitney, 2200  
First Bank Place East, Minneapolis, Minnesota 55402, on or  
before November 8, 1983.

Dated: October 6, 1983.

DORSEY & WHITNEY

By 

Edward J. Schwartzbauer

Becky A. Comstock

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Attorneys for Defendant Reilly  
Tar & Chemical Corporation

## EXHIBIT A

1. Feb. 2, 1968: Memo by L. T. Johnson, MPCA; upon investigation, Ray Folland told Johnson about water pollution problem at Republic Creosote and requested assistance.
2. Dec. 9 & 10, 1968: Drafts of letters to be sent to City Manager and Finch; evidently never mailed.
3. May 28, 1969: Memo by Koonce; report of meeting between City staff and Koonce at which City requested MPCA assistance for storm sewer project and evaluation of Republic Creosote problems.
4. May 28, 1969: Meeting scheduled between staff of MPCA and City to discuss water pollution problem from Republic Creosote.
5. July 3, 1969: Letter from Eugene Hickok to City Manager; requesting authorization to begin ground water investigation.
6. July 28, 1969: Letter to Hickok from City Manager; authorizing ground water study (\$2,975.70).
7. Jan. 12, 1970: Memo to file by W. G. Popham, City Attorney on Conference held; "trace amount present...no problem yet...can treat this in water system...these findings are at the lower end of comp. for detection..."
8. Feb. 6, 1970: Report prepared by R. Folland, Director of Public Works; regarding street and storm sewer installation in Republic Creosote area and associated pollution problems.
9. Feb. 10, 1970: Confidential memo to City Council from City Manager; alerting Council to status of Republic Creosote situation; noting assistance will be sought from MPCA, State Health Dept., etc.
10. Feb. 27, 1970: Memo from Wayne Popham, City Attorney, to City Manager; regarding plan of action for Republic Creosote matter.
11. Mar. 2, 1970: Meeting held between Republic Creosote personnel and City staff; regarding status of pollution abatement and possible street extension.

12. Mar. 17, 1970: Letter from Hickok to Petersen, SLP Health Department; phenol levels found in various wells in St. Louis Park.
13. Mar. 24, 1970: Memo to City Manager from Folland; estimated costs for rehabilitation and pollution control at Republic Creosote site.
14. Apr. 6, 1970: MPCA Attorney's Notes; noting that even if phenol tests accurate, geologist doubted ground water could percolate 1000 feet in 30 years - may have come from other source.
15. Apr. 6, 1970: Meeting held between MPCA and City staff; regarding enforcement of pollution regulations at Republic Creosote.
16. May 5, 1970: Letter from Robert Frey, Burdick Grain Co. to City; transmitting their findings on phenol in ground water.
17. May 12, 1970: Meeting held between St. Louis Park City Council and Republic Creosote and Reilly Tar and Chemical Staff.
18. May 19, 1970: Letter to Dr. Baker, Mellon Institute from McPhee; inquiring as to costs for sampling St. Louis Park wells for phenol.
19. May 20, 1970: Memo to File from McPhee reporting on May 12th meeting with Reilly Chemical and Tar representatives; "They complained of the storm water drainage onto their property. The City recognized the manner of drainage of the entire area, but could not install storm sewer because of the possibility of infiltration of contaminants in the soil from the Creosote saturated soil".
20. July 30, 1970: File notes - Wayne Popham, City Attorney; "State Board Health finds no phenols; PCA will not move on ground water as it stands now if Mellon find phenols and State Board of Health disputes, standing on their own results, we must anticipate a need to impeach the test results of the Board of Health.."
21. Aug. 24, 1970: MPCA Attorney's Notes; regarding meeting at which possibilities of phenols in wells, testing, soil contamination, etc. discussed.
22. Aug. 30, 1970: File notes of Wayne Popham; regarding telephone call with Robert Lindahl, attorney for MPCA; geologist working on Republic Creosote (Wikre) feels that City wells are too distant and too deep to be contaminated with phenols from Republic Creosote property (copy in attorney's files).

23. Oct. 14, 1970: Memo for file from McPhee; Tibor Kods of MPCA had called suggesting trying to get Republic Creosote to agree to a set of stipulations and avoiding expensive litigation.
24. Oct. 21, 1970: Water samples taken from City wells for analysis by Rice Laboratories (\$2,090).
25. Nov. 22, 1970: MPCA Litigation Report lists treatment necessary to abate pollution. These include oil separation facilities, storage safeguards, excavating saturated soil and re-routing drainage.
26. Jan. 22, 1971: Memo from City Attorney to St. Louis Park staff; asking questions regarding City's possible property damage claims against Reilly Tar and Chemical Company for land owned by the City located directly south of the Reilly property.
27. Mar. 17, 1971: Memo to file by City Attorney; preparation of evidence necessary to know exact nature of claim and whether or not it was relatively insignificant or potentially involved a great deal of damages... soil borings should be done in area to define scope of saturation...
28. Mar. 25, 1971: Memo to City Manager from City Assessor; specifications to cure the land due to soil pollution unknown at present...need to determine minimum requirements to calculate cost cure.
29. Apr. 20, 1971: Memo to file from City Attorney; "as to nature of damages, it appears that PCA will not require City or any other body to excavate the Creosote saturated soil..."
30. May 4, 1971: Note to file (settlement conference) from City Attorney; "need to confirm fact that saturated soil is not threat to ground water; no affirmative evidence."
31. July 8, 1971: Letter to John Lawman, Hennepin County District Court from Robert Lindahl, Special Assistant Attorney General for MPCA; requesting extension of deadline for submitting certificate of readiness and statement concerning the State of Minnesota, et al. vs. Reilly Tar and Chemical Corporation.
32. July 14, 1971: Letter to MPCA Attorney, Lindall from City Attorney; requesting postponing decision on dropping litigation.
33. Sept., 1971: R. C. closes the processing portions of the plant which were the major sources of air and surface water pollution.

34. Sept. 21, 1971: Memo to Grant Merritt from Lindall; reporting on closing of Republic Creosote and requesting verification of closing; requesting staff assistance to dispose of litigation.
35. Nov. 11, 1971: MPCA Attorney notes; discussion regarding litigation and status of plant.
36. Feb. 5, 1972: Memo to file from Popham; report to City Council re-status "the matter has been reviewed with PCA and they are of the opinion that no soil removal is going to be necessary".
37. Mar. 20, 1972: Memo to City Manager from Popham: "Suit to enforce water and air pollution controls strategy ...at present there is no danger to health from water pollution...ground water phenol in excess of standards and approaching point where it could affect potability of public water supply in area...was indicated by 4 tests...State Board of Health, also tested water but unable to establish phenol in water...Mellon Institute did not find phenols...must be assumed that we do not have a claim for underground water pollution...
38. Apr. 21, 1972: Letter to William Thibault, St. Louis Park Planning Director from Albert Hofstede, chairman of Metropolitan Council: regarding the St. Louis Park Neighborhood Development Program (at Republic Creosote site) - the Metropolitan Council has certain questions regarding the environmental impact included in the draft environmental clearance worksheet and their staff will be contacting the City within next week to discuss the questions.
39. Apr. 27, 1972: Memorandum received from Metropolitan Council staff: several questions regarding soil saturation, ground water levels, run-off, etc. were submitted to the City for answer.
40. June 6, 1972: Letter to Hofstede from Thibault: responding to letter of 5/16/72 submitting information regarding high water table, soil conditions and plantings, and including information on soil borings.
41. June 22, 1972: Memo to SLP staff from Thibault: recapping impressions of meeting held on June 14, 1972. Task force made up of representatives from City, Metropolitan Council, PCA, State Health Department and Watershed District will be formed. The Task Force will review available data and decide what additional steps should be taken.
42. July 1, 1972: "Assemblage of analytical data regarding Reilly Chemical by St. Louis Park Health Department" prepared by City: based on all data available regarding former Republic Creosote site.

43. July 12, 1972: Letter to Don Magore, Metro Sewer Board, from McPhee: requesting assistance and determining phenols and oils in the soils and wastes.
44. Sept. 27, 1972: Response to HUD/Bruss' site report on NDP area prepared by City of St. Louis Park: answering the various questions raised in Mr. Bruss' report.
45. Oct. 6, 1972: Memo to Merritt from Lindall: reports status and recommends staff inquire of City as to plans to modify soil conditions to prevent water pollution.
46. Oct. 6, 1972: City Council selects Orr-Schelen-Maveron as consultant for Creosote storm sewer project.
47. Dec. 14, 1972: Letter to Feeney, HUD, from City Manager: assuring that City will fulfill its commitment to undertake public improvements representing the City's non-cash credits for the NDP.
48. Dec. 20, 1972: Letter to Thibault from Feeney: indicating satisfaction of HUD requirement on City's commitment for NDP area.
49. Dec. 26, 1972: Letter to Senator Hubert Humphrey from William Warfield: indicating approval of grant for NDP area (Oak Park Village).
50. Feb. 13, 1973: Memo to City Manager from Thibault: NDP project fully approved; grant approval released December 18, 1972.
51. June 20, 1973: Letter from City Attorney to City Manager: a copy of a letter from the Special Assistant Attorney General for the MPCA (June 15, 1973) was enclosed stating that the MPCA will not be in a position to dismiss their complaint against Reilly until they have received and reviewed a proposal from the City for eliminating potential pollution hazards at the Republic Creosote site.
52. Aug. 24, 1973: Meeting was held with MPCS, MDH, City of St. Louis Park and Orr-Schelen-Mayeron and Associates (OSM): OSM presented a storm water study which dealt with the petro chemical pollution problem at, and adjacent to the site and a feasibility report for the construction of the storm sewer. Study proposes use of "land farming" to rehabilitate contaminated surface soils.
53. Dec. 3, 1973: Memo to City Attorney from St. Louis Park Director of Public Works: noting meeting on November 26 of City, OSM, and MPCA staff agreeing that the City had to meet the water quality standards for the storm water run-off for drainage from



the Creosote property. In return for the agreement to meet the water quality standards, the MPCA would drop, or suspend its law suit on the property. The suspension of this law suit would allow the City to then proceed with the public hearings and construction phases of the storm sewer project.

54. Jan. 14, 1974: Memo from City Attorney to City Manager: noting that PCA has put a hold on the proposed stipulation due to the fact of recent ground water tests showing the presence of phenol; suggests meeting of persons involved.
55. Jan. 29, 1974: Memo to MPCA staff from MPCA Attorney: expressing need to be kept informed of Republic Creosote status for final resolution and dismissal and requesting status report.
56. Jan. 31, 1974: Notes of MPCA staff on meeting of January 29, 1974: stating City was told to conduct hydrogeologic study; preliminary plan approval given and hydrogeologic study needed before final approval will be given. City was informed stipulation will be presented including both ground and surface waters.
57. Feb. 4, 1974: Letter to SLP Director of Public Works from OSM: requesting permission of City to do additional chemical analysis and soil survey work.
58. May 7, 1974: Letter to Thibault from Feeney: valuation adjustment refused (City's valuation later agreed to).
59. May 28, 1974: Letter to Barbe, MPCA, from Heisel: forwarding copy of above cited memorandum.
60. July 19, 1974: Meeting held between MPCA, MDH, OSM, and City staff.
61. Undated: Draft of letter to Wayne Long: requesting additional information.

EXHIBIT B

1. 11/12/61 Memo from R. D. Connery to C. Andre, City Official - Reilly Property assessment.
2. 4/29/63 Memo from H. H. Burry, City Attorney, to City Council - Supreme Court Opinion; Attorney's remarks.
3. 11/8/71 Memo from McPhee, City Official to Popham, City Attorney - Cost analysis of damage caused by Reilly.
4. 2/2/72 Memo from McPhee, City Official, to Thibault, City HRA - Clean up of Creosote problem.
5. 10/2/72 Memo from City offices - meeting with HUD on Soil Report.
6. 10/16/73 Memo on meeting from McPhee, City Official - Meeting on Creosote problems.
7. 12/2/74 Memo from Popham, City Attorney to Cherches, City Manager - Meeting with Asst. Attorney General, Kaul.
8. 3/31/76 H.W. notes from Bob Criswell and Bill O'Connor - Composition of Pollutants.
9. 1/4/77 Draft Amendment to Stipulation Agreement from City Attorney to File - Amendment to Stipulation Agreement between MPCA and St. Louis Park.
10. 5/18/77 Original letter from Thibault, City HRA to HRA Commissioner - Settlement of Controversy.
11. 12/15/77 Memo from Thibault, City HRA to File - B. Strautz of Isaac Walzon went through file doing research.
12. 12/20/77 Memo from Gardebring, PCA to Agency Board Members - Reilly litigation.
13. 12/22/77 Letter from DEC to Mayor Sterne - Concern about Creosote Levels.
14. 1/4/78 Letter from Attorney Popham to City Manager Elwell - Enclosure of Draft Resolution on Water Problem.
15. 1/10/78 Memo from Popham as City Attorney to City Manager Elwell - Dickerson Agreement.

16. 1/16/78 Working Paper or Response to MPCA from "Bill" - Adverse effects of Highway Construction.
17. 2/1/78 Letter from Thibault, City HRA to Debbie Armstrong, Mankato State - You may review the file we have on the Reilly Creosote Problem.
18. 4/5/78 Letter from Wade, State Health Department, to Thibault, City HRA - Need for test Borings.
19. 5/1/78 Letter from Gardebring, MPCA to Thibault, City HRA - Need for test Borings.
20. 4/2/79 Report from R. Strauss - Groundwater Problem and History.